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Supreme Court, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM 1973

No. 73-468

LAWRENCE H. MILLIMAN, SR.,

Petitioner,

vs.

JOHN B. FRIEDRICH, THOMAS M. MURPHY, and JOY R. MILLIMAN, a/k/a JOYBELLE R. SMITH, a/k/a J. R. ACKERSON,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE

EIGHTH CIRCUIT

Lawrence H. Milliman, Sr.
Attorney Pro Se - Petitioner
8800 Tenth Ave. South
Minneapolis, Minn. 55420
Tel. No. 612-854-7853

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In the

Supreme Court of the United States

OCTOBER TERM 1973

LAWRENCE H. MILLIMAN, SR.,

Petitioner,

vs.

JOHN B. FRIEDRICH, THOMAS M. MURPHY, JOY R. MILLIMAN, A/K/A JOYBELLE R. SMITH, A/K/A J. R. ACKERSON,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

TO THE HONORABLE, THE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Your petitioner, a citizen of the state of Minnesota, Lawrence H. Milliman, sr., prays that Writ of Certiorari be issued to review the opinion and judgment of the United States Court of Appeals for the Eighth Circuit which were entered on April 17, 1973.

OPINIONS BELOW

The Order and Judgment of the United States District Court for the State of Minnesota Third Division, entered January 4, 1973 is reproduced in the appendix, and also the entire transcript in the Court is reproduced in the appendix of this petition. The opinion and judgment of the United States Court of Appeals for the Eighth Circuit entered April 17, 1973 is reproduced in the appendix. The opinion is not to be published.

JURISDICTION

The judgment of the Court below (see Appendix) was entered on April 17, 1973. A timely petition for rehearing was denied on June 5, 1973. (see Appendix) The jurisdiction of this Court is invoked under Title 28 of the United States Code, Section 1254; the Vith and XIVth Section 1, Amendments to the Constitution, and pursuant to Title 28 of the U.S. Code, Section 1343 (1), (2), (3), and (4), 1443 (1) and (2) and 2201 and 2202; Title 42 of the U.S. COde Annotated 1981 through 1989 and 1994, because title, rights privileges and/or immunities are claimed under the United States Constitution and United States Statutes and have been denied your petitioner under color of state law.

QUESTIONS PRESENTED FOR REVIEW

Thisis an appeal by Lawrence H. Milliman, Sr. from an Order of the U.S.C.A. for the Eighth Circuit affirming an order of Judge Miles W. Lord dismissing his action for an injunction declaring the judgment issued by state District Court Judge John B. Friedrich dated October 30, 1972 as null and void because it violated plaintiff's right to a fair and impartial trial and that Judge Friedrich abused his discretionary powers by permitting his Court to hear and determine an issue of real estate

which was clearly in violation of Statutes enacted by the Minnesota State Legislature in the taking of property acquired during coverture M.S. 518.54 Subdivision 5 and giving it to the former spouse of four and one half years of marriage without cause, justification or need. This was also an appeal from the erratic and arrogant behavior of U.S. Judge Miles W. Lord who had evidently prejudged the case and would not allow the plaintiff to speak and present his side of the case by running off the bench.

QUESTIONS

1. Can state or federal courts deny litigants within their jurisdiction the immunities and privileges afforded United States citizens under the United States Constitution?

2. Are litigants in state domestic civil action denied the protection of the United States Constitution and/or Congressional laws?

3. Are the equal treatment under the law and due process clauses of the XIVth Amendment to the Constitution of the United States to be upheld in the Minnesota state Court and federal Courts?

4. Can a state court render its judgments based on custom and usage of state law and sex discrimination.

5. Can a state court illegally take real estate (inheritance) away from one party without just compensation when it is specifically contrary to state statutes (M.S. 518.54, subd. 5)?

6. Are such acts by state jurist deemed to be acting "under color of state law"?

7. Are such acts committed by state jurists

protected under the guise of "acting in their official capacity"?

8. Are such abusive acts deemed to be a violation of an individuals federal Constitutional and federal Civil rights?

9. Are citizens who are parties to any legal action accorded the right to speak and defend their cause in a state or federal court?

STATEMENT OF THE CASE

The instant action was commenced on November 29, 1972 after state District Judge John B. Friedrich of the First Judicial District for Dakota County at Hastings, Minnesota issued a judgment dated October 30, 1972 in Civil File No. 72908 involving the following litigants: John P. Sampson and Nancy A. Sampson, husband and wife; Plaintiffs and Timberline, Inc., a Minnesota Corporation, The First National Bank of St. Paul, a national bank, Delmac Distributing, Inc., a Minnesota corporation, Lawrence H. Milliman, a/k/a L. H. Milliman, Sr., Joy R. Milliman, White House Estates, Inc., a Minnesota Corporation, Stanley Swanson, Swanson Construction Company, Inc., Burnsville Lumber Company, a Minnesota Corporation, Bruce W. Nihart, Marla B. Nihart, the Lennon Company, a Minnesota corporation, Harold Rubin d/b/a Rubin Realty Company, Carl D. Onischuk, Dakota County Auditor, and Earl V. Zehnder, Dakota County Treasurer, also all other persons unknown claiming any right, title, estate, interest, or lien in the real estate described in the complaint herein; Defendants, to determine ownership to that certain parcel of real estate legally described as:

> Lot 38, Block 4, Oslund's Timberline Addition to Dakota County, state of Minnesota.

Paragraph #10 of said judgment states as follows

"That whatever interests, rights, title or claim: defendant, Lawrence Milliman, a/k/a L. H. Milliman, Sr., may have had heretofore in and to said real estate have heretofore been awarded and vested in defendant, Joy R. Milliman, and the said defendant, Lawrence H. Milliman, a/k/a L. H. Milliman, Sr., has no right, title, interest of claim herein."

divesting Mr. L. H. Milliman, Sr. of any claim to that real estate.

Paragraph #11 states as follows:

"That Mr. L. H. Milliman, Sr. inherited approximately Thirty Nine Thousand ($39,000.00) Dollars which was deposited into the White House Estates, Inc. account, a Minnesota corporation which was organized by L. H. Milliman, Sr. prior to his second marriage to Joy R. Milliman, a/k/a Joybelle R. Smith, a/k/a J.R. Ackerson.

During the trial of May 4, 1972 and September 5, 1972, Judge Friedrich deliberately stopped Mr. L. H. Milliman, Sr. from speaking and the presentation of his case. It was apparent from the beginning that this case had been prejudged by Friedrich and it was to be a "production" where these elements of the "Bar" would steal the house built by Mr. L. H. Milliman, Sr., contractor, from his inheritance in order to pay the legal fees for the numerous crooked divorce attorneys who were at this trial.

Subsequently, on February 16, 1973, the ex-wife, Joybelle R. Milliman, and her attorneys completed the sale of the property evidenced by the closing statement (see p. 25) and she and her attorneys of the firm of Nielsen, Stock and Blackburn, Ltd. of Minneapolis, Minnesota received

Twenty Thousand One Hundred Fifty Two and 72/100 ($20,152.72).

On January 4, 1973 in the U.S. Courthouse in Minneapolis, Minnesota before Judge Miles W. Lord, Bruce W. Blackburn was allowed to speak and present his argument and during this short presentation, Judge Lord mentioned that he had read the file and that he would sign an Order. Mr. L. H. Milliman, Sr. arose to present his argument that these attorneys had conspired to steal his inheritance contrary to Minnesota State Law from him by the use of the state court under Judge Friedrich.

Judge Miles W. Lord got up and made a bee-line off the bench as though he had something more important to do than to hear out a citizen with a grievance present his case. (see p. 15-18)a transcript of hearing) For those people in the U.S. Courtroom that day it was thought that Judge Lord "had to answer Nature's call" in his abrupt haste to leave the room.

This was not true, as a marshall and the court reporter came over to Mr. L. H. Milliman, Sr. to say that Judge Lord would not be returning to the courtroom, and that Mr. L. H. Milliman, Sr.'s trial was over.

Upon leaving the courtroom, one of the young attorneys said that that was one of the speediest justices he had ever seen.

Then to show the complete impartiality of the Minneapolis Divorce court business, Mr. Blackburn obtained another Judgment and Decree (see p. 24) issued this time by District Judge Crane Winton in the original divorce action giving him, Mr. Blackburn Ten Thousand ($10,000.00) Dollars from Mr. Milliman; denying all other relief, despite the fact that they had just confiscated the fruits of Mr. L. H. Milliman, Sr.'s

labors and inheritance in excess of Thirty Nine Thousand ($39,000.00) Dollars.

REASONS FOR GRANTING THE WRIT

The petitioner maintains that his right to a fair and impartial trial; to equal protection under the laws and to the Due process clause were violated in the state court trial. That petitioner was absolutely and unequivocally denied his right to present his argument and position in the U.S. District Court. That it was apparent that there was more than a casual knowledge and relationship between the various trial judges, because of the similarity of the treatment accorded the petitioner in the state and federal courts. It was clear and evident that the state district court judge wantonly ignored M.S. 518.54 Subd. 5. "Property acquired during coverture. Except as provided in this subdivision, "property acquired during coverture" means any property, real or personal, acquired by the parties, or either of them, to a divorce or annulment pro ceeding at any time during the existence of the marriage relation between them, or at any time during which the parties were living together as husband and wife under a purported marriage relationship which is annulled in an annulment proceedings. "Property acquired during coverture" does not include any property real or personal, acquired by either spouse before, during, or after coverture, where said property is acquired as a gift, bequest devise or inheritance made by a third party to one but not to the other spouse, or any property transferred from one spouse to the other."

The Minnesota State Legislature went further and set out in M.S. 518.58 Disposition of Property Acquired During Coverture. "Upon a divorce

for any cause, or upon an annulment, the court may make suchdisposition of the property of the parties acquired during coverture as shall appear just and equitable, having regard to the nature and determination of the issues in the case, the amount of alimony or support money, if any, awarded in the judgment, the manner by which said property was acquired and the persons paying or supplying the consideration therefor, the charges or liens imposed thereon to secure payment of alimony or support money, and all the facts and circumstances of the case."

It apparently was a deliberate effort to take from petitioner an approximate Forty Nine Thousand Nine Hundred Eleven ($49,911.00) Dollars in assets and then allow the so-called public servants to divest the petitioner of his assets and rights secured by Minnesota State Statutes. This sequestration and/or seizure of a citizen's property and money is not an isolated incident but a common practice under the color of state law and protected and fostered by the unscrupulous legal profession in the Minnesota State Courts and judicial system. Sex discrimination is rampant and directed solely against and to disenfranchise the male citizens who are involved in domestic relations litigation in the Minnesota judicial system. The attorneys and judges of the state of Minnesota have obstructed the administration of justice, and harassed our people and have eaten out their substance, and conspired with others to intimidate our citizens, and have completely ignored our constitution and failed as officers of the courts to enforce the laws enacted by the duly elected legislature, and your petitioner has petitioned for redress in the most humble terms and has been answered by repeated injuries and has appealed to their native justice and magnanimity but they have been deaf

to the ears of justice by the tyrants of the state bench and bar.

It has become necessary for your petitioner to defend his rights and to seek out justice since competent legal counsel will not protect our citizen's rights and property.

CONCLUSION

In the final summation and for the forementioned acts and/or ommissions all consummated in the color of state law and in the so-called 'public interest', the writ should be granted.

Respectfully submitted,

BY:

/s/ Lawrence H. Milliman, Sr.

LAWRENCE H. MILLIMAN, SR.
Petitioner - Attorney Pro Se
8800 - 10th Avenue South
Minneapolis, Minnesota 55420
(612) 854-7853

APPENDIX

STATE OF MINNESOTA
COUNTY OF DAKOTA

DISTRICT COURT
FIRST JUDICIAL DISTRICT

John P. Sampson and Nancy A. Sampson, husband and wife,
Plaintiffs,

File No. 72908

vs.

JUDGMENT

Timberline, Inc., a Minnesota Corporation, et al.,
Defendants.

The above entitled matter came on for trial before Hon. John B. Fiedrich at General Term of this Court, in the Courthouse at Hastings, Minnesota, on the 4th day of May, 1972, and following the deposition of certain Motions and service of Summons and Complaints upon additional defendants pursuant to the Order of this Court, the matter was again brought on for trial before this Court on September 5, 1972. Thomas M. Murphy, Esq., appearing on behalf of the plaintiffs, and appearances on behalf of the defendants were as follows: Jerome Kluck, Esq., Dakota County Attorney for Carl D. Onischuk, Dakota County Auditor and Earl V. Zehnder, Dakota County Treasurer; Gerald Svoboda, Esq., for the First National Bank of St. Paul; Bruce W. Blckburn, Esq. for Joy R. Milliman; Arthur J. Stock, Esq. for White House Estates, Inc., A. H. Michals, Esq. for Parker Electric Company, Inc.; Donald F. Giblin, Esq. for Rubin Realty Company; Al Bergsten, Esq. for Burnsville Lumber Company; Edward M. Christian, Esq. for Imperial Developers, Inc., Gopher Heating and Sheet Metal, Inc., and Raymond E. Haeg Plumbing, Inc. M. J.

Priestly, Esq. for Crawford Door Company, Daniel Cypher, Pro Se, Lawrence H. Milliman, a/k/a L. H. Milliman, Pro Se, Bruce W. Nihart, Pro Se, and Marla B. Nihart, Pro Se. The Court having heard all of the testimony of the parties, the Court having considered the pleading herein and the argument of counsel, and being fully advised in the premises, did on the 24th day of October, 1972 duly make and file its Findings of Fact, Conclusions of Law, and Order for Judgment herein.

NOW THEREFORE, pursuant to said Order, it is hereby adjudged that:

1. That defendant, Timberline, Inc., is the owner in fee simple of the following described real estate located in Dakota County, to-wit:

> Lot Thirty-eight (38), Block Four (4) Oslund Timberline Addition, Dakota County, state of Minnesota

subject however, to the liens, interest and rights of others as herein determined.

2. That the County of Dakota has a valid lien against said real estate for the payment of delinquent real estate taxes for the years 1968 through 1971, current real estate taxes for the year 1972, if unpaid, and for any unpaid installments of special assessments that have become due.

3. That the first National Bank of Saint Paul has two first mortgage liens against said real estate as evidenced by those certain mortgages dated December 15, 1961, and September 10, 1965, respectively, and filed in the office of the Register of Deeds in and for Dakota County, in Book 248 of Mortgages at p. 60 and Book 223 of Mortgages, p. 287, respectively; that as to the two said mortgages the mortgage dated December 15, 1961, has priority over the mortgage dated September 10, 1965; that

said First National Bank of Saint Paul has agreed to release said real estate mortgage from the liens of both said mortgages upon the receipt of $4,000.00.

4. That the following Defendants each have a valid lien against said real estate to secure payment to them of the following amounts set against their respective names, and upon payment of said amounts their liens shall be satisfied and extinguished, to wit:

Burnsville Lumber Company	$5,157.90
Parker Electric Co., Inc.	4,700.00
Raymond E. Haeg Plumbing, Inc.	3,190.00
Gopher Heating & Sheet Metal, Inc.	585.00
Imperial Developers, Inc.	251.50
Daniel Cypher	200.00
Crawford Door Company	181.00

5. That the priority of the foregoing liens is as follows, to wit;

(a) First and paramount is the lien of the County of Dakota for real estate taxes as aforesaid;

(b) Second are the two mortgage liens of the First National Bank of Saint Paul;

(c) Third is the lien of Burnsville Lumber Company

(d) Fourth and co-equal as a class; Parker Electric Co., Inc.; Raymond E. Haeg Plumbing, Inc.; gopher Heating and Sheet Metal, Inc.; Imperial Developers, Inc.; Daniel Cypher; and Crawford Door Company.

6. That the title of defendant, Timberline, Inc., is subject to a valid and enforceable contract to sell and convey the fee title to said real estate to Defendant, White House Estates, Inc., for a total consideration of $5,800.00, of which $1,000.00

has heretofore been paid, free and clear of the mortgage liens of the First National Bank of Saint Paul, but subject however, to:

(a) The Lien of the County of Dakota for delinquent and current real estate taxes and unpaid installments of special assessments that have become due; provided, however, that said Timberline, Inc., shall pay $484.17 of such unpaid real estate taxes and special assessments.

7. That the rights and interest of Defendant, White House Estate, Inc., to said real estate and to receive the fee title thereto is subject to a valid and enforceable contract to sell and convey the fee title to said real estate to Plaintiffs, John P. Sampson and Nancy A. Sampson for a total consideration of $46,000.00 free and clear of all liens, interests, and rights therein save and except only the lien of the County of Dakota for real estate taxes payable in 1972 and real estate taxes and special assessments for work completed after July 1, 1971, and payable thereafter; that the said Plaintiffs are ready, willing and able to perform in accordance with such contract.

8. That defendant, Rubin REalty Company, is entitled to a commission in the amount of $2,300.00 upon the consumation of the sale and conveyance of the fee title to said real estate to the said Plaintiffs; that such commission shall thereupon be payable by defendant, White House Estates, Inc.

9. That the following Defendants have no right, title or interest whatsoever in and to said real estate, to-wit: Stanley Swanson, d/b/a Stanley Swanson Construction Company; Henry L. Johnson; Delmac Distributing, Inc.; the Lennon Company; Bruce W. Nihart, and Marla B. Nihart.

10. That whatever interests, rights, title or claims Defendant Lawrence Milliman, a/k/a L. H.

Milliman, Sr., may have had heretofore in and to said real estate have heretofore been awarded and vested in Defendant Joy R. Milliman, and the said Defendant, Lawrence H. Milliman, a/k/a L. H. Milliman, Sr., has no right, title, interest or claim herein.

11. That upon conveyance of fee title to said real estate to the said plaintiffs, the net proceeds payable by said plaintiffs remaining after payment of expenses of sale and after satisfaction of the liens and interests as set forth in Conclusions #2, 3, 4, and 8 shall be payable to Defendants White House Estates, Inc., and Joy R. Milliman.

12. That save and except the right, title and interests determined herein, all claims and actions asserted herein by any party against any other party hereto should be dismissed.

13. That each party hereto shall bear his own costs herein.

(Seal) Nick Vujovich
CLERK OF THE DISTRICT COURT

Dated this 30th day of
October, 1972.

BY: Dorothy Wopland
CHIEF DEPUTY

TRANSCRIPT OF HEARING

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
THIRD DIVISION

Lawrence H. Milliman, Sr.,
Plaintiff,
vs. No. 3-72 Civ. 326
John B. Friedrich, Thomas M. Murphy and Joy R. Milliman, a/k/a Joybelle R. Smith, a/k/a J. R. Ackerson,
Defendants.

Minneapolis, Minnesota
January 4, 1973

TRANSCRIPT OF PROCEEDINGS
O.C. Breviu
OFFICIAL COURT REPORTER
542 U.S. Court House
MINNEAPOLIS, MINNESOTA 55401
Telephone 335-0119

Transcript of proceedings had in the above-entitled matter, heard by the Honorable Miles W. Lord, one of the judges of said Court, in Court Room No. 1, United States Court House, Minneapolis, Minnesota, on Thursday, the 4th day of January, 1973, at 9:25 o'clock, a.m.

APPEARANCES:

On Behalf of the Plaintiff

Lawrence R. Milliman, pro se.

On Behalf of Defendant Friedrich

William H. Kuretsky, Special Assistant Attorney General, State of Minnesota St. Paul, Minnesota.

On Behalf of Defendant Murphy

Arnold E. Kempe, Esq., West St. Paul, Minnesota.

On Behalf of Defendant Joy R. Milliman

Bruce W. Blackburn, Esq., Minneapolis, Minnesota.

--

THEREUPON, the following proceedings were duly had:

THE COURT: Mr. Milliman, Bruce Blackburn.

MR. BLACKBURN: Present. Good morning, Your Honor.

THE COURT: Just come up and note your appearances. William -- how do you say that?

MR. KURETSKY: Kuretsky.

THE CLERK: And also Arnold Kempe.

THE COURT: And Arnold Kempe. Where is he?

MR. KEMPE: HEre, Your Honor.

MR. BLACKBURN: I am Bruce W. Blackburn, attorney in Minneapolis, Minnesota, representing the defendant in this matter, Joybelle R. Smith.

THE COURT: now, give me a moment here. Go ahead.

MR. BlACKBURN: Your Honor, this morning you have before you a motion on behalf of the defendant that I represent, Joybelle R. Smith, to dismiss the complaint of the plaintiff on the basis that this Court lacks subject matter jurisdiction, and, secondly, that the complaint does not state a claim upon which relief can be granted, and, thirdly, that this matter has previously been before this

Court and has been previously adjudicated.

This action by the plaintiff arises as stated in his complaint, out of an action in the State Court, that is, the District Court for Dakota County in the State of Minnesota. It was an action to determine adverse claims that was commenced by a couple by the name of John Sampson and Nancy Sampson, and they were represented in that action by one of the defendants in this case, Thomas M. Murphy, an attorney admitted to practice in the State of Minnesota, whose offices are in West St. Paul. This was an action, pursuant to a state statute, to clear up title to property. The plaintiff in this case was named as one of the defendants in this case in the State Court.

However, previously in an action for divorce in the Hennepin County District Court, which had been commenced by Lawrence H. Milliman, Sr., who is also the plaintiff here this morning, the title to this particular piece of property in Dakota County had come up, as to the matter of ownership of the property as between Lawrence H. Milliman, Sr., and at that time Joy R. Milliman, my client, who is now Joy R. Smith, and the Hennepin County District Court had awarded whatever interest Mr. Milliman might have had in that property to Mrs. Smith.

But it did become necessary for the Sampsons to commence this action in Dakota County, and they did so, and a number of claimants filed pleadings in the case. And we went on for trial on May 4, 1972. And Lawrence Milliman, Sr., appeared at that time, and approximately at noon of that day he filed a pleading, which was his first formal appearance in that case.

Now, the pleading that he had filed was labeled as an answer, but it did not assert a claim of ownership on his part to this particular parcel of real estate. And in the course of the proceedings,

Judge Friedrich, who was the trial judge, and who is also one of the defendants in this case, ruled that as between --

THE COURT: I have read this file, such as it is. Do you have an order drawn?

MR. BLACKBURN: Yes, I do.

THE COURT: Will you hand it to me, Please?

MR. BLACKBURN: Your Honor, I might add that my order grants the motion as to all of the defendants.

(To Mr. Kempe) So if you have asimilar order--

MR. KEMPE: I am happy to accept the order.

THE COURT: The first order will suffice. Look it over. If it doesn't, you can step by.

We will recess now. The case is over, Mr. Milliman. You can go now.

MR. MILLIMAN: Your Honor, may I speak for just a moment?

THE COURT: No. Court is adjourned.

--

REPORTER'S CERTIFICATE

I certify the foregoing pages of typewritten matter to be a true and correct transcript of the proceedings had in the above-entitled matter on the dated indicated.

Oswald C. Breviu

Official Court Reporter

ORDER

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
THIRD DIVISION

Lawrence H. Milliman, Sr.,
Plaintiff,

No. 3-72 Civ. 326

vs.

John B. Friedrich, Thomas M. Murphy and Joy R. Milliman, a/k/a Joybelle R. Smith, a/k/a J. R. Ackerson,
Defendants.

You are hereby notified that in the above entitled case, on the 5th day of January, 1973, we filed the Order of dismissal, providing defendants have judgment for their costs, and defendant Joybelle R. Smith have judgment for attorneys' fees in sum of $250.00. (Lord, J.) Judgment has been entered pursuant to the foregoing order.

Harry A. Sieben, Clerk

BY: Viola Haukness
Viola Haukness
Deputy Clerk

TO: Lawrence H. Milliman, Sr.,
8800 10th Ave. S.
Minneapolis, Mn. 55420
Attorney for pro se

Bruce W. Blackburn
415 Seven-Thirty Building
Minneapolis, Minnesota 55402
Attorney for Joy Smith

Arnold E. Kempe
1- Signal Hills
West St. Paul, Mn. 55118
Attorney for Thomas M. Murphy

Hon. Warren Spannaus, Mr. Thomas R. Muck, 160 State Office Building, St. Paul, Minnesota 55155

Note: If an appeal is contemplated, the Rules of the United States Court of Appeals and "Suggestions to Attorneys Concerning Appellate Rules & Practice" can be procured from the Clerk, United State Court of Appeals, U.S. Court House and Customs House, St. Louis, Missouri.

JUDGMENT AND ORDER

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

Lawrence H. Milliman, Sr., Appellant

File No. 73-1114

vs.

John B. Friedrich, Thomas M. Murphy, and Joy R. Milliman, a/k/a Joybelle R. Smith a/k/a J. R. Ackerson,
Appellees.

Appeal from the United States District Court for the District of Minnesota.

Before GIBSON, LAY and STEPHENSON, Circuit Judges.

Filed: April 17, 1973

ORDER

This appeal is before the screening panel pursuant to appellees' motion to dismiss the appeal under Local Rule 8.

This appeal is from an order by the Honorable Miles W. Lord dismissing appellant's civil rights action against appellees, a District Judge for the State of Minnesota, appellant's former wife, and her attorney. A thorough review of the record in this case convinces us that the questions

presented for review are so unsubstantial as not to need further argument and that summary affirmance is appropriate.

The state judge was acting in his official capacity and therefore is entitled to judicail immunity in the action he took and the remaining appellees were not acting "under color of law."

The order of the District Court is therefore affirmed and this appeal is dismissed with prejudice at appellant's cost.

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 73-1114. September Term, 1972

Lawrence H. Milliman, Sr., Appellant,

vs.

John B. Friedrich, et al, Appellees.

Petition of appellant for rehearing filed in this cuase having been considered, it is ordered by the Court that the same be, and it is hereby, denied.

June 5, 1973

JUDGEMENT AND DECREE

STATE OF MINNESOTA DISTRICT COURT

COUNTY OF HENNEPIN FOURTH JUDICIAL DISTRICT

Lawrence H. Milliman, Sr.,
Planitiff,

File No. 14-611
March 7, 1973

vs.

Joybelle R. Milliman,
Defendant

Pursuant to the Order of the Court on file herein and on motion of Bruce W. Blackburn, Esquire, attorney for defendant,

IT IS HEREBY ADJUDGED AND DECREED AS FOLLOWS:

1. That defendant have and recover of plaintiff the sum of Ten Thousand ($10,000.00) Dollars, the amount ordered.

2. That the other relief sought by the defendant be, and the same hereby is, in all things denied.

BY THE COURT:

GERALD R. NELSON
Clerk of District Court

(Seal)

JUDGMENT ROLL
Filed March 7, 1973
at 11:20 A.M.
Gerald R. Nelson, Clerk

FIRST FEDERAL SAVINGS & LOAN ASSOCIATION OF SAINT PAUL

LOAN SETTLEMENT STATEMENT

To SAMPSON, JOHN P. (Name of Borrower) 2-16-73 (Date)

3601 Pinebridge Dr. - Eagan (Location of Property)

Application No 6817 Date of Loan Papers 2-16-73

Your application for a real estate loan has been approved, and we submit herewith for your information the terms of the loan, and the expenses thereof, whether charged to you by the association, paid for you by the association, or paid by you to some person other than the association.

Loan No [redacted] Amount $ 31,000.00 Rate of interest 2-1/2%

Each monthly Payment of $ 130.76 is due on the 15th day of each month, beginning on March 19 73

Monthly principal and interest payment	$ 216.76
Monthly tax and insurance payment	$
Total payment	$

A Amount of Loan $ 31,000.00

Amount Received From You $ [redacted]16,000.00

1,353.19

Total Amount Credited To Your Account $ 46,353.19

B We have charged or will charge to your account for expenses incurred in connection with this loan, the following items:

DISBURSEMENTS

DATE PD	PAYEE	PURPOSE	CHECK #	AMOUNT
2-16-73	First Federal Savings and Loan	Loan Costs		220.40
2-16-73	First Federal Savings and Loan	February Interest		90.42
2-16-73	First Federal Savings and Loan	Sellers Costs		402.50
2-16-73	Dakota County Treasurer	Taxes and Assessments		5,944.22
2-16-73	White House Estates	Net Proceeds of Sale		20,152.72
2-16-73	Timberline, Inc.	Per Deed		4,253.23
2-16-73	Burnsville Lumber Co.	Satisfaction of Lien		5,157.90
2-16-73	Parker Electric Company	Satisfaction of Lien		4,700.00
2-16-73	Raymond E. Haag Plumbing, Inc.	Satisfaction of Lien		3,190.00
2-16-73	Cypher Heating and Sheet Metal	Satisfaction of Lien		545.00
2-16-73	Imperial Developers, Inc.	Satisfaction of Lien		251.50
2-16-73	Daniel Cypher	Satisfactionof Lien		200.00
2-16-73	Crawford Door Company	Satisfaction of Lien		181.00
2-16-73	Rubin Realty	R. E. Commission		1,300.00
2-16-73	First Federal Savings and Loan	Escrow for 1973 Taxes		45.30
		TOTAL FUNDS DISBURSED		46,353.19

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IN THE

Supreme Court of the United States

October Term, 1973
No. 73-468

LAWRENCE H. MILLIMAN, SR.,
Petitioner,

vs.

JOHN B. FRIEDRICH, THOMAS M. MURPHY, and JOY R. MILLIMAN, a/k/a JOYBELLE R. SMITH, a/k/a J. R. ACKERSON,
Respondents.

BRIEF FOR RESPONDENT FRIEDRICH IN OPPOSITION

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Respondents.

BRIEF FOR RESPONDENT FRIEDRICH IN OPPOSITION

Respondent Minnesota District Court Judge John B. Friedrich appears in opposition to the Petition for Writ of Certiorari and respectfully prays that the petition be denied.

OPINION

The Order of the United States District Court, filed January 5, 1973, and the Judgment and Order of the Eighth Circuit Court of Appeals, filed April 17, 1973, from which appeal is taken, are reproduced in the appendix of Petitioner's petition. Neither was published.

JURISDICTION

The judgment of the Eighth Circuit was filed on April 7, 1973. An order denying a motion for rehearing was entered by the Eighth Circuit on June 5, 1973. The petition for certiorari in this matter was filed on September 11, 1973. Federal question jurisdiction under 28 U.S.C. §§ 1254, 1343 (1)-(4), 1443 (1)-(2), and 2201-2202, 42 U.S.C. §§ 1981-1994, and U.S. Const. amends. V and XIV has been asserted.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Const. amend. V provides in relevant part:

> No person shall . . . be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

U.S. Const. amend. XIV provides in relevant part:

> Section 1. . . . No State shall . . . deprive any person of life, liberty or property, without due process . . . .

42 U.S.C. § 1983 (1971) (Vol. 9 U.S.C. (1971), p. 10, 283) provides:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation on any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity or other proper proceeding for redress.

QUESTIONS PRESENTED

1. Does the refusal by a state court judge to hear extended oral argument by a party to a quiet title proceeding in state court, which party's rights were previously adjudicated in another judicial proceeding, constitute a denial of a fair trial?

2. Does refusal by a judge to hear oral argument from a party in a patently insubstantial and frivolous § 1983 action, the judge having fully reviewed the file including a memorandum filed by said party, constitute a denial of a fair trial?

3. May an unsuccessful litigant in a state court divorce proceeding continue a course of harassment of the successful litigant in that proceeding by repeatedly commencing specious and insubstantial actions in federal court?

STATEMENT OF THE CASE

This is an action brought under 42 U.S.C. § 1983 (1971) in which petitioner Lawrence H. Milliman, Sr., appearing *pro se*, seeks money damages and injunctive relief against John B. Friedrich, a District Court Judge of the State of Minnesota, Joy R. Milliman, Petitioner's former wife, and Thomas M. Murphy, the attorney of Joy R. Milliman. Petitioner seeks relief against Respondent John B. Friedrich for his actions in issuing a certain order (set forth at pp. 10-14 of Petitioner's Petition For Writ Of Certiorari To The United States Court Of Appeals For The Eighth Circuit—hereinafter referred to as "petition") in an action to determine adverse claims to real estate. In addition, Petitioner challenges the disposition of his case by United States District Court Judge Miles Lord.

To properly appreciate the issues of this litigation, a brief review of its history is necessary. On January 17, 1972 Petitioner and Joy R. Milliman were divorced, and a Judgment

and Decree was entered by the District Court for the Fourth Judicial District, State of Minnesota. *Milliman v. Milliman*, State of Minnesota, District Court, Fourth Jud. Dist., File No. D14611. As part of the final divorce decree, Joy R. Milliman was awarded all rights, claims, and title to certain real property free and clear of any right, claim, or title of her former husband.

Petitioner did not appeal this decision to the Minnesota Supreme Court—rather, following the entry of the judgment and decree in the divorce action, he attempted to "remove" the case to the U.S. District Court, District of Minnesota, Third Division, filing a petition for removal with the clerk of that court. The defendant-former wife in that case, *Milliman v. Milliman*, United States District Court, District of Minnesota, Third Division, File No. 4-72 Civ. 106, moved to dismiss for lack of subject matter jurisdiction and on June 1, 1972, a Memorandum Order was entered by the United States District Court, Judge Earl Larson, dismissing the case. Milliman appealed to the United States Court of Appeals for the Eighth Circuit and the decision of Judge Larson was summarily affirmed by that court on August 28, 1972. *Milliman v. Milliman*, United States Court of Appeals for the Eighth Circuit, File No. 72-1418 (unreported).

On May 4, 1972 the successors in interest to the real property of Joy R. Milliman (hereinafter referred to as "Sampsons") brought to trial an action in the District Court of Dakota County (First Jud. Dist.) to determine adverse claims to that realty. Both Joy R. Milliman and Petitioner Lawrence H. Milliman were named in the action as defendants. Midway through the first day of trial Petitioner filed an answer in which he asserted *no title or interest* in the realty but rather asked the court to find that his son-in-law and daughter, to

whom *he* had conveyed an interest, had good title to the property. (This conveyance occurred after the disposition of the realty in the divorce proceeding—*Milliman v. Milliman*, State of Minnesota, District Court, Fourth Jud. Dist., File No. D14611.)

The presiding judge, Respondent John B. Friedrich, honoring the divorce decree, ruled on October 17, 1972 that Petitioner had no right, claim, title, or interest in the real property. *Sampson v. Timberline, Inc., et al.*, State of Minnesota, District Court, First Jud. Dist. (Dakota County), File No. 72908, Judgment, paragraph 10, Petition at pp. 10-14. While Petitioner has accurately quoted paragraph 10 of the Judgment on p. 5 of his petition, he has, in an obvious attempt to mislead the Court, substantially and materially altered paragraph 11. Respondent Friedrich refers the Court to the true provisions of paragraph 11 on p. 14 of the petition.

Petitioner Milliman was displeased with Judge Friedrich's ruling. Again, instead of appealing that ruling to the appropriate state court he brought a civil rights action in the United States District Court against Judge Friedrich, petitioner's former wife Joy R. Milliman and Thomas M. Murphy, attorney for Joy R. Milliman. In that action, *Milliman v. Friedrich, Murphy and Milliman*, United States District Court, District of Minnesota, Third Division, File No. Civil Action 3-72-326, petitioner alleged that his civil rights had been infringed by Judge Friedrich's acceptance of the terms of the divorce decree relating to ownership of the realty.

United States District Court Judge Miles Lord granted the motions of all defendants to dismiss petitioner's complaint on January 4, 1973. On January 5, 1973, judgment was entered in the United States District Court for the District of Minnesota, Third Division. The judgment dismissed Petitioner's

complaint with prejudice, awarded defendants judgment for their costs and awarded Petitioner's former wife judgment for attorney fees in the amount of $250.00.

Petitioner served Notice of Appeal on Respondent Friedrich on January 31, 1973 and filed said Notice of Appeal with the United States Court of Appeals for the Eighth Circuit on February 5, 1973. Petitioner's appeal was docketed in that court on February 16, 1973. Upon motions of defendants Friedrich, Milliman and Murphy to summarily affirm and to dismiss the appeal under Local Rules 8 and 9 of the Eighth Circuit,[1] and after Petitioner's filing of his Appellant's Brief to the Eighth Circuit in which petitioner fully argued his case, that court entered its order, filed April 17, 1973, summarily affirming Judge Lord's order and dismissing the appeal. The Eighth Circuit held that Judge Friedrich was immune from this civil suit since he was acting in his official capacity and that the remaining defendants were not acting under color of law.

In a MOTION FOR REHEARING dated April 26, 1973, petitioner moved the Eighth Circuit to reconsider. On May 22, 1973, petitioner filed with the Clerk of the Eighth Circuit

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[1] Pertinent provisions of Local Rules 8 and 9 of the United States Court of Appeals for the Eighth Circuit are as follows:

RULE 8. SUMMARY DISMISSAL OR AFFIRMANCE.

Within fifteen days after the appeal has been docketed in this Court, the appellee may file a motion to dismiss or a motion to affirm. . . .

(a) A motion to dismiss any appeal shall relate to the issue that the appeal is not within the jurisdiction of the Court.

(b) A motion to affirm shall be based on the ground that the questions presented for review are so unsubstantial as not to need further argument. . . .

RULE 9. FRIVOLOUS AND UNMERITORIOUS APPEALS.

If upon consideration of any interlocutory motion, or as a result of a review under Rule 6, it shall appear to the Court that the appeal is frivolous and entirely without merit, the appeal may be dismissed without the notice contemplated in Rule 8.

a document entitled "APPELLANT'S REQUEST FOR CERTIFICATION AND TRANSMISSION OF RECORDS ON APPEAL TO THE CLERK OF UNITED STATES SUPREME COURT". On June 5, 1973, the Eighth Circuit entered its order denying Petitioner's request for rehearing.

On September 11, 1973, Petitioner filed and docketed with this Court a Petition For Writ Of Certiorari To The United States Court Of Appeals For The Eighth Circuit.

REASONS FOR DENYING THE WRIT

The reasons for denying petitioner's request are numerous. One of the more important, however, is that a grant of certiorari would allow petitioner, who has at all times appeared *pro se*, to further the program of harassment which he has directed subsequent to his divorce at his former wife, and as incidental thereto, judicial officers. Petitioner, opted not to seek the speedy and economical route for resolving his disagreement with the divorce court's ruling with regard to the realty in question—specifically, an appeal to the Minnesota Supreme Court. Rather, he improperly attempted to "remove" the divorce action (after judgment) to federal court and, that having been rejected by the United States District Court and the Eighth Circuit, attempted to conjure up such irregularities in the *Sampson* adverse claims proceeding, over which Respondent Friedrich presided, as would lay the foundation for a civil rights action. That civil rights action, in which Judge Friedrich has been made defendant, has been dismissed by the United States District Court and the action of the District Court has been summarily affirmed, owing to the insubstantial and frivolous nature of the appeal, by the Eighth Circuit.

The explanation for Petitioner's erratic actions is obvious. Since the divorce he has been and is continuing to force his former wife to incur unnecessary legal expenses. Granting certiorari in this case would, to the delight of Petitioner, give new life to his scheme. From the relief sought by Petitioner in the complaint in this matter, to wit, both declaratory and monetary relief, it is apparent that Petitioner has selected the most expensive route of appeal from the disposition of the realty.

Apart from this basic equitable consideration, Petitioner's petition and his cause of action suffer from additional infirmities.

First, the petition was not timely. Supreme Court Rule 22.3. provides:

> A petition for writ of certiorari in all other cases shall be deemed in time when it is filed with the clerk within the time prescribed by law.

28 U.S.C.A. § 2101(c) (1959), the relevant law, provides:

> Any other appeal or any writ of certiorari intended to bring any judgment or decree in a civil action, suit or proceeding before the Supreme Court for review shall be taken or applied for within ninety days after the entry of such judgment or decree. A justice of the Supreme Court, for good cause shown, may extend the time for applying for a writ of certiorari for a period not exceeding sixty days.

While the order of the Eighth Circuit of which Petitioner seeks review was filed on April 17, 1973, Petitioner's petition was not filed with this Court until September 11, 1973, well in excess of the allowable 90 days. Even if the Eighth Circuit order were considered final only as of the date of the en-

try of its order denying petitioner's motion for rehearing, specifically, June 5, 1973, Petitioner still has failed to file his petition within the 90-day period, which ended September 3, 1973. Owing to the nature of Petitioner's action, as described above, there can be no good cause for extension.

Second, as asserted by counsel for Joy Milliman to Judge Miles Lord in the District Court, the complaint should be dismissed for lack of subject matter jurisdiction. Since Petitioner's complaint is insubstantial and frivolous it fails to state any substantial federal question. Federal question jurisdiction is therefore absent. In a case dealing with a similar fact situation, where an unsuccessful litigant in a state divorce proceeding brought a civil rights action in federal court, the United States District Court for the Northern District of New York dismissed the complaint for want of a substantial federal question. *Jemzura v. Belden,* 281 F. Supp. 200 (N.D.N.Y. 1968). In that case Judge Timbers stated:

> There is abroad in the land a notion that the Civil Rights Act has vested in the federal courts the function of an Ombudsman—to review any grievance, no matter how petty, stemming from the aggrieved party's unsuccessful results in state court litigation. Nothing could be further from the Congressional purpose.

281 F. Supp. at 206.

The infringements of Petitioner's constitutional rights to fair trial, which he articulates as the basis for his action, consist of Judge Friedrich's refusal to hear Petitioner belabor his arguments in the *Sampson* case and Judge Lord's refusal to hear his oral argument in the District Court. Judge Friedrich refused further argument from the Petitioner when it

became apparent that (1) the matter of his ownership of the realty was res judicata, per the earlier divorce proceeding, and (2) that Petitioner in fact asserted *no title or interest* in the realty in his answer, but, to the contrary, asserted that he had conveyed any interest which he had to certain third parties. Judge Lord, in the United States District Court action, dismissed Petitioner's complaint after having fully reviewed the file—including a RESPONSE OPPOSING DEFENDANT'S MOTION FOR DISMISSAL, dated January 3, 1973, which Petitioner had filed.

Clearly, Judge Friedrich's action was justified. Furthermore, since Petitioner had the opportunity to present his written arguments to Judge Lord and did in fact do so in his RESPONSE, there can be no substantial question as to whether Petitioner was denied rights of fair trial or any other constitutional right. Simply stated, there is no substantial federal question.

Third, and with particular regard to Respondent Friedrich, Judge Friedrich is immune from civil suit by virtue of the doctrine of judicial immunity. In the case of *Serbus v. Hoffman*, 450 F. 2d 296 (8th Cir., 1971), in which a *pro se* plaintiff brought an appeal in a similar case against a state judge, the Eighth Circuit Court summarily affirmed (under Local Rule 8) the District Court's dismissal of the complaint, noting:

> . . . the allegations of the complaint arose out of action taken by Judge Hoffman when he was serving in his official capacity as a state judge, and the doctrine of judicial immunity is applicable and protective. Pierson v. Ray, 386 U.S. 547, 554, 87 S. Ct. 1213, 18 L. Ed. 2d 288 (1966). See also Jones v. Jones, 410 F. 2d 365, 366 (7th Cir., 1969).

450 F. 2d at 298. See also *Gay v. Heller*, 252 F. 2d 313 (5th Cir., 1968) (§ 1983 case); *Haldane v. Chagnon*, 345 F. 2d 601 (9th Cir., 1965) (§ 1983 case). Clearly, the Milliman complaint stated no cause of action against Friedrich since he is immune from a civil suit of this nature, which has arisen out of reasonable action taken by him in the course of his judicial duties.

CONCLUSION

On p. 7 of his petition, Petitioner asserts that "it was apparent that there was more than a casual knowledge and relationship between the various trial judges, because of the similarity of the treatment afforded him in the state and federal courts". This Court, if it denies the Milliman Petition, will surely be added to Petitioner's list of jurists who have made it their life's goal to deprive him of his day in court. Notwithstanding, Respondent Friedrich respectfully requests that, for the reasons outlined above, the PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEAL FOR THE EIGHTH CIRCUIT in this matter, should be denied.

Respectfully submitted,

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Dated: October 1, 1973.